

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITE NATIONAL RETIREMENT FUND,

ORDER

04 CV 2354 (GBD) (RLE)

Plaintiff,

-against-

FAIRBROOKE COMPANY, INC.,

Defendant. -----

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GEORGE B. DANIELS, District Judge:

Plaintiff commenced this action against defendant for failure to make withdrawal liability payments pursuant to the Employment Retirement Income Security Act of 1974 (“ERISA”).

After entering a judgment of default in this action, the Court referred this matter to Magistrate Judge Ronald L. Ellis for an inquest on damages. He issued a Report and Recommendation (“Report”) recommending plaintiff be awarded \$4,425,020.52. This amount represents \$4,013,106 in withdrawal liability payment; \$205,337.26 in interest; \$205,337.26 in additional damages; and \$1,240 in attorneys’ fees and costs. In the Report, the magistrate judge advised the parties that failure to file timely objections to the Report will constitute a waiver of those objections in both the District Court and on later appeal to the United States Court of Appeals. No party filed objections to the Report and the time to do so has expired. 28 U.S.C. § 636(b)(1).

The Court may accept, reject or modify, in whole or in part, the findings and recommendation set forth within the Report. 28 U.S.C. § 636(b)(1). Where there are no objections, the Court may accept the Report provided there is no clear error on the face of the record. Nelson v. Smith, 618 F.Supp. 1186, 1189 (S.D.N.Y. 1985); see also Heisler v. Kralik, 981 F.Supp. 830, 840 (S.D.N.Y. 1997), aff’d sub nom. Heisler v. Rockland County, 164 F.3d

618 (2d Cir. 1998).

After reviewing the Report, the Court finds that the record is not facially erroneous. Therefore, the Court adopts the Report in its entirety and, for the reasons stated therein, the Court directs the Clerk of the Court to enter judgment in accordance therewith.

Dated: New York, New York
March 23, 2006

SO ORDERED:



GEORGE B. DANIELS
United States District Judge